

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ASIM BEN THABIT AL- KHALAQI,

Petitioner,

v.

GEORGE W. BUSH, *et al.*,

Respondents.

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)
) **MISC. CIV. ACTION NO. 08-MC-4422 (TFH)**
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) **CIVIL ACTION NO. 05-CV-0999 (RBW)**
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) **PETITIONER'S STATUS REPORT**
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STATUS REPORT PURSUANT TO COURT'S JULY 11, 2008 ORDER

Petitioner Asim Ben Thabit Al-Khalaqi, through undersigned counsel, submits the following status report.

I.

INTRODUCTION

Petitioner is currently detained at Guantanamo Bay Naval Base and may have been detained as long as six years though the exact timing of his detention and arrival at the Base is unknown. He filed his original petition on June 30, 2005, and an amended petition was filed on December 7, 2005. No factual return has been filed to date.¹ By way of this filing, Petitioner will attempt to address the issues which may concern the Court.

¹ Petitioner has received only a summary of the unclassified portion of his CSRT hearing.

Mr. Al-Khalaqi has been cleared for release by the Administrative Review Board ("ARB"). In a Joint Status Report filed on July 7, 2008, Respondents represented that they are making diplomatic arrangements for Mr. Al-Khalaqi's release. However, he was notified that he was cleared for release in February 2008, but he has remained detained for the past five months awaiting these diplomatic arrangements.

II.

THE PROCEEDINGS IN THIS CASE TO DATE

Petitioner previously sought 30-days' advance notice from Respondents prior to any transfer or removal from Guantanamo Bay. By way of this pleading, he renews that request. While he does not wish anything to delay his ultimate release from Guantanamo, he wants to ensure that he will be released to freedom as opposed to further detention or worse.

A. His Case Should Be Reopened and The Previously-Pending Motions Deemed Renewed.

This Court filed an order administratively closing this case on January 31, 2007 pending resolution of jurisdictional issues. Also, on January 11, 2006, the Court denied all pending motions without prejudice. Since those jurisdictional issues have now been resolved by *Boumediene v. Bush*, 128 S. Ct. 2229 (2008), the case should be reopened and Mr. Al-Khalaqi's previously-filed motions, which will be identified below, deemed renewed.

B. Petitioner's Previously-Filed Motions

As noted, On December 5, 2005, Petitioner filed a motion for an Order Requiring Respondents to Provide Counsel with Advance Notice of any Removal from Guantanamo Bay.

Pursuant to this Court's July 11, 2008 Ruling, Petitioner asserts his right to such notice and he does seek 30-days' advance notice regarding his transfer or removal from Guantanamo.²

On December 29, 2005, Petitioner filed a Motion for an Order to Show Cause or Immediate Issuance of a Writ of Habeas Corpus. On the same day it was filed and before Respondents even filed an Opposition, the Honorable Reggie B. Walton denied Petitioner's Motion. However, he subsequently, on January 11, 2006, issued an order denying, without prejudice, all pending motions until such time as the jurisdictional issues surrounding the petition were resolved. At this time, Petitioner seeks to renew his previously-filed motion for immediate issuance of the writ or, alternatively, for issuance of an order to show cause. He will also file a separate notice requesting renewal of this prior motion.

² Since Petitioner has been cleared for release, it is quite conceivable that if given notice that he will be released to either Yemen or Saudi Arabia, and that the release is not for purposes of further detention in those countries, Petitioner will not oppose any such release and will immediately inform Respondents of that position.

C. Petitioner's Status and Any Other Pending Charges or Proceedings.

As noted, Petitioner has been cleared for release. Petitioner has not been charged with war crimes nor does that appear likely since he has been cleared for release. Counsel for Petitioner are unaware of any duplicate petitions.

Petitioner's mental health, *i.e.*, his severe depression directly resulting from his prolonged detention and its result in his despondent mental state which undersigned counsel have witnessed occur over these past three years, is of extreme concern to counsel. These concerns have been raised with Respondents in an effort to expedite Petitioner's release but to no avail thus far.

D. Petitioner Intends to Seek Discovery.

This Court has ordered production of a factual return by August 29, 2008. If Petitioner is not promptly and properly released to either Yemen or Saudi Arabia, he will be seeking discovery. The unclassified CSRT proceedings (actually just portions thereof) that he received contain only conclusory statements without identifying the source of the information, and provide no basis for evaluating their credibility; in the majority of the statements, there is simply no basis for the statement in question. As to those statements attributed to Petitioner, there is no basis for evaluating the reliability of such statements or even whether they were actually made. In this proceeding, Petitioner consistently denied being an enemy combatant or taking part in hostilities.³ While it may be premature to make a satisfactory case for discovery, it is plain that counsel cannot effectively assist

³ This is consistent with Respondent's decision to clear him for release.

Petitioner, nor may his detention be properly evaluated, without more information, gained either through a factual return or discovery or both. Counsel therefore anticipates seeking discovery unless Petitioner is released before that opportunity arises.

III.

CONCLUSION

Petitioner respectfully requests that the Court set a hearing on the motion seeking immediate issuance of the writ after the receipt of the factual return in this case.

Respectfully submitted,

Dated: July 18, 2008

/s/ Shereen J. Charlick
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